

MAR - 3 2014

David J. Bradley, Clerk of Court

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

GERMANE McBURNIE §
Plaintiff §
§
VS. § CIVIL ACTION NO. _____
§
FRENCH TRUCKING, INC. §
AND DANNY M. MILLS §
Defendant §

PLAINTIFF'S ORIGINAL COMPLAINT AND JURY DEMAND

TO THE HONORABLE UNITED STATES DISTRICT COURT:

GERMANE McBURNIE (Plaintiff) brings this civil action for recovery of damages against FRENCH TRUCKING, INC. and DANNY M. MILLS (Defendants) as a result of severe injuries he sustained in a vehicular collision that occurred on March 15, 2012 in Kenedy County, Texas.

1. Parties

a. Plaintiff is :

Germane McBurnie
1004 Tesoro Avenue
Rancho Viejo, TX 78575
Telephone: (617) 840-4246
Last three numbers of party's driver's license number: 824
Last three numbers of the party's social security number: 659

Plaintiff is a resident of, and citizen in, the State of Texas.

b. The address of Defendant, FRENCH TRUCKING, INC. is:

French Trucking, Inc.
160 Bud Crockett Drive
Lexington, TN 38351

FRENCH TRUCKING, INC. is a non- resident or foreign corporation with its principal place of business in the State of Tennessee. Said Defendant does not maintain a registered agent for service in the State of Texas despite the fact that at all times material herein, said Defendant was conducting and transacting business in the State of Texas. As a nonresident motor carrier that does not maintain an agent for service in the State of Texas, the Chairman of the Texas Transportation Commission is deemed to be its registered agent for service pursuant to Texas Practice and Remedies Code, Section 17.062: Pursuant thereto, service of process may be accomplished by serving the following individual via certified mail, return receipt requested: Chairman Ted Houghton, Texas Transportation Commission, 125 East 11th Street, Austin, TX 78701-2483.

c. The address of Defendant, DANNY M. MILLS, is

Danny M. Mills
1140 Hebron Road
Middleton, TN 38052

DANNY M. MILLS resides in, and is a citizen of, the State of Tennessee, and may be personally served with process at his address as stated above.

2. Statement of the Grounds for Jurisdiction of the Suit

Plaintiff is a citizen of the State of Texas. Both Defendants reside in, and are citizens of, the State of Tennessee. The amount in controversy, without interest and costs, exceeds the sum or value specified in 28 U.S.C. §1332. The Court has jurisdiction of the suit because there is complete diversity of citizenship as defined in 28 U.S.C. §1332.

3. Jurisdiction *In Personam* over Defendants

This court has general jurisdiction *in personam* over Defendants under Texas Civil because the Defendants, at all times material herein, have conducted and transacted business in the State of Texas and have had continuous and systematic activities within the State of Texas..

4. Venue

Since this is a civil action wherein jurisdiction is founded only on diversity of citizenship, this suit may be brought in this judicial district because a substantial part of the events or omissions giving rise to the claim occurred in this judicial district as specified in 28 U.S.C. 1331(a)(2).

5. Statement of the Claims

a. The Occurrence

On March 15, 2012, Plaintiff, Germane McBurnie, was driving a 2002 Hyundai Accent passenger car southbound on U.S. Highway 77 (a two-lane highway) in the right hand lane in Kenedy County, Texas. The Defendant, DANNY M. MILLS, an employee of Defendant, FRENCH TRUCKING, INC., was operating a 2006 Volvo truck-tractor and hauling a semi-trailer. The truck and trailer, which were owned and maintained by Defendant, FRENCH TRUCKING, INC., was following directly behind the Plaintiff in the right hand lane. DANNY M. MILLS, who was traveling at a high rate of speed and following too closely behind the Plaintiff, began a maneuver to pass the Plaintiff's vehicle. At that point in time, as he was moving into the left hand lane, DANNY M. MILLS realized that there was an oncoming northbound vehicle in close proximity. In reaction thereto, DANNY M. MILLS began braking while reentering the southbound lane, but was too late. When his vehicle had moved over to the southbound lane shoulder, he collided with the right rear quarter panel Plaintiff's vehicle. As a proximate result, Plaintiff, GERMANE McBURNIE caused to sustain substantial property

damages to her vehicle and serious bodily injuries

b. Cause of Action Against Defendant, Danny M. Mills

Defendant, DANNY M. MILLS, had a duty to exercise the degree of care that a reasonably careful person would use to avoid harm to others under circumstances similar to those described herein. Plaintiffs' damages and the occurrence in question were proximately caused by Defendant DANNY M. MILLS' negligent disregard of said duty.

Under Texas Transportation Code Section 542.001, the Code applies to this crash because Title 7 (Vehicles and Traffic), subtitle C (Rules of the Road) relates to the operation of vehicles and the vehicles in question were being operated on a roadway or street.

Said Defendant's negligence consisted of, but is not limited to, the following acts and omissions:

- A. Defendant failed to keep a proper lookout for Plaintiffs' safety that would have been maintained by a person of ordinary prudence under the same or similar circumstances; and,
- B. Defendant was traveling at an excessive, unsafe speed;
- C. Defendant failed to apply his brakes in a timely manner;
- D. Defendant failed to maintain control of his truck/trailer combination;
- E. Defendant was following too closely behind the Plaintiff; and,
- F. Defendant attempted to pass the Plaintiff's vehicle when it was unsafe to do so.

c. Vicarious Liability of Defendant, French Trucking, Inc.

At the time of the occurrence in question, DANNY M. MILLS was an employee of Defendant, FRENCH TRUCKING, INC. and was within the course and scope of his employment. Therefore, Defendant FRENCH TRUCKING, INC. is vicariously liable for the negligent acts of its employee, DANNY M. MILLS.

6. Demand for the Relief Sought

Plaintiff demands that the court render judgment for and in favor of Plaintiff and against the Defendants, adjudging that Plaintiff recover:

- a. Compensatory damages for personal injury in the unliquidated amount to be established at the trial;
- b. Pre-judgment interest on the amounts of compensatory damages for which he is entitled to recover;
- c. Post-judgment interest on the amounts of damages for which he is entitled to recover; and,
- d. Costs of Court.

7. Demand for Jury Trial

Plaintiff demands trial by jury.

Respectfully submitted,

By: /s/ David M. Adkisson

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ATTORNEY IN CHARGE FOR
PLAINTIFF

JS 44 (Rev. 12/21)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM)

I. (a) PLAINTIFFS
McBURNIE, GERMANE(b) County of Residence of First Listed Plaintiff **CAMERON (TEXAS)**
(EXCEPT IN U.S. PLAINTIFF CASES)(c) Attorney's (Firm Name, Address, and Telephone Number)
DAVID M. ADKISSON
BEGUM LAW GROUP, 5826 IH 10 WEST, SAN ANTONIO, TX 78201
(210) 564-9854CDEFENDANTS
FRENCH TRUCKING, INC.
MILLS, DANNY M.County of Residence of First Listed Defendant **HENDERSON (TN)**
*(ON U.S. PLAINTIFF CASES ONLY)*NOTE IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED

Attorney's (If Known)

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)* 1 U.S. Government Plaintiff 3 Federal Question *(U.S. Government Not a Party)* 2 U.S. Government Defendant 4 Diversity *(Indicate Citizenship of Parties in Item III)*III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)* PTF DEF PTF DEFCitizen of This State 1 1 Incorporated or Principal Place of Business In This State 4 4Citizen of Another State 2 2 Incorporated and Principal Place of Business In Another State 3 3Citizen or Subject of a Foreign Country 3 3 Foreign Nation 6 6IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 375 False Claims Act
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 367 Health Care Pharmaceutical Personal Injury Product Liability		<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability		<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability			<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine			<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans <i>(Excludes Veterans)</i>	<input type="checkbox"/> 345 Marine Product Liability			<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle			<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability			<input type="checkbox"/> 490 Cable Sat TV
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury			<input type="checkbox"/> 850 Securities Commodities Exchange
<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 362 Personal Injury - Medical Malpractice			<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 196 Franchise				<input type="checkbox"/> 891 Agricultural Acts
				<input type="checkbox"/> 893 Environmental Matters
				<input type="checkbox"/> 895 Freedom of Information Act
				<input type="checkbox"/> 896 Arbitration
				<input type="checkbox"/> 899 Administrative Procedure Act Review or Appeal of Agency Decision
				<input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	FEDERAL TAX SUITS	
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 463 Alien Detainee	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motion to Vacate Sentence	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 520 General		
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 535 Death Penalty		
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer w/Disabilities Employment	<input type="checkbox"/> 540 Mandamus & Other		
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer w/Disabilities Other	<input type="checkbox"/> 550 Civil Rights		
	<input type="checkbox"/> 448 Education	<input type="checkbox"/> 555 Prison Condition		
		<input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement		
V. ORIGIN <i>(Place an "X" in One Box Only)</i>		IMMIGRATION		
<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 462 Naturalization Application		
	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 465 Other Immigration Actions		

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*
28 U.S.C. 1332

VI. CAUSE OF ACTION

Brief description of cause
COLLISION BETWEEN TRACTOR/TRAILER (DEFENDANT) AND PLAINTIFF'S CAR IN KENEDY COUNTY

VII. REQUESTED IN COMPLAINT:

 CHECK IF THIS IS A CLASS ACTION
UNDER RULE 23, F.R.C.P.

DEMAND \$

CHECK YES only if demanded in complaint
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See Instructions)

JUDGE

DOCKET NUMBER

DATE

02/27/2014

FOR OFFICE USE ONLY

SIGNATURE OF ATTORNEY OF RECORD

RECEIPT #

AMOUNT

APPLYING IIP

JUDGE

MAG. JUDGE